

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HORACE G. FRIEND.

CASE NO. C21-5566JLR

Plaintiff,

ORDER DISMISSING
AMENDED COMPLAINT

U.S. ATTORNEY GENERAL,

Defendant.

I. INTRODUCTION

Before the court is *pro se* Plaintiff Horace G. Friend’s amended complaint against Defendant U.S. Attorney General (the “Attorney General”). (Am. Compl. (Dkt. # 8).) Mr. Friend is proceeding *in forma pauperis* (“IFP”). (See IFP Order (Dkt. # 5).) Under 28 U.S.C. § 1915(e), courts have authority to review IFP complaints and must dismiss them if “at any time” it is determined that a complaint is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The court previously reviewed

1 Mr. Friend's complaint and determined that it failed to state a claim. (*See* 9/3/21 Order
2 (Dkt. # 7) at 5.) The court again finds that the amended complaint fails to state a claim
3 against the Attorney General and DISMISSES Mr. Friend's claim without leave to amend
4 and with prejudice.

5 **II. BACKGROUND**

6 On July 24, 2021, Mr. Friend filed a declaration and application to proceed IFP
7 and a proposed complaint, which, after some corrections were made to the IFP
8 application, Magistrate Judge S. Kate Vaughan granted on August 31, 2021. (*See* IFP
9 App. (Dkt. # 1); Prop. Compl. (Dkt. # 1-1); Corrected IFP App. (Dkt. # 4); (IFP Order).)
10 Mr. Friend's proposed complaint was subsequently filed on the docket. (Compl. (Dkt.
11 # 6).)

12 Mr. Friend's original complaint alleged that the Attorney General violated his
13 constitutional rights by ignoring his "application for the return of his stolen certificate of
14 citizenship" and denying his applications for "a U.S. Passport" and replacement Social
15 Security card. (*Id.* at 1-2.) On September 3, 2021, the court found that Mr. Friend's
16 complaint failed to state a claim because it failed to allege facts that "plausibly
17 establish[ed] the Attorney General's liability," or that would "allow either the court or
18 Attorney General to discern—without significant speculation—the nature of the
19 constitutional rights Mr. Friend believes are at issue, whether Mr. Friend has suffered any
20 cognizable harm . . . , or how the Attorney General's conduct is connected to any such
21 harm." (*See* 9/3/21 Order at 3-5.) The court granted Mr. Friend leave to amend but
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warned that if he “fails to file an amended complaint that corrects the identified deficiencies, the court will dismiss his complaint without leave to amend.” (*Id.* at 5.)

In his amended complaint, which Mr. Friend alleges that he has suffered a deprivation of a constitutional “right to travel” because he has been denied access to certain government documents, including a U.S. passport and a certificate of citizenship. (Am. Compl. at 1-2.) Mr. Friend further alleges that the denial of these documents has rendered him unable to travel abroad, which has prevented him from visiting family members who live outside the United States, including for purposes of mourning the deaths of close family members on several occasions. (*See id.* at 1, 3.) As relief, Mr. Friend does not ask for money damages but seeks the return of his certificate of citizenship, an order compelling issuance of a passport, and an order conferring U.S. citizenship upon his several children and grandchildren. (*Id.*)

III. ANALYSIS

Title 28 U.S.C. § 1915(e)(2)(B) authorizes a district court to dismiss a claim filed IFP “at any time” if it determines: (1) the action is frivolous or malicious; (2) the action fails to state a claim; or (3) the action seeks relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B). Section 1915(e)(2) parallels the language of Federal Rules of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). The complaint therefore must allege facts that plausibly establish the defendant’s liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). Because Mr. Friend is a *pro se* plaintiff, the court must construe his pleadings liberally. *See* *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

1 Mr. Friend's amended complaint improves on the original in several important
 2 respects. It names the constitutional right Mr. Friend believes has been violated—the
 3 right to international travel (*see* Am. Compl. at 1)—and identifies the harm that has
 4 resulted from the deprivation of that right—pain and suffering resulting from the lost
 5 opportunities to visit and mourn with family members abroad (*see id.* at 3). However,
 6 even liberally construed, Mr. Friend still fails to allege facts that plausibly connect the
 7 Attorney General—the sole defendant—to his alleged injury.¹ For instance, although Mr.
 8 Friend makes passing reference to a “certificate that was snapped from [his] hand,” and
 9 “hard earned money . . . paid for a 10 year passport,” he does not describe these events or
 10 allege that the Attorney General was involved in either action. (*Id.* at 2.) Given the
 11 Attorney General’s attenuated connection to the immigration and travel-related
 12 documents of which Mr. Friend has allegedly been deprived, the court would need to
 13 engage in substantial and improper speculation to identify a connection to the Attorney
 14 General on the facts alleged in the amended complaint.

15 Moreover, Mr. Friend continues to style his action as one brought under 42 U.S.C.
 16 § 1983. (*Id.*) For the same reasons given in the court’s prior order of dismissal, the court
 17 construes Mr. Friend’s amended complaint as an action under *Bivens v. Six Unknown
 18 Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). (9/3/21 Order at
 19 3-4.) Even so construed, Mr. Friend again fails to state a claim because “a Bivens action
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21 ¹ At other points, and despite suing only the Attorney General, Mr. Friend alleges that he
 22 intends to prove that unspecified “government employees, including judges” are responsible for
 his injuries. (*See id.* at 1.)

1 can be maintained against a defendant in his or her individual capacity only, and not in
2 his or her official capacity.” *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987).
3 As before, Mr. Friend neither alleges that the Attorney General acted in an individual
4 capacity, nor gives the court a reason to construe the amended complaint in that manner.
5 (See generally Am. Compl.)

6 Accordingly, the court concludes that Mr. Friend’s amended complaint fails to
7 state a claim and dismisses it with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B).

8 When a court dismisses a *pro se* plaintiff’s complaint, the court must give the
9 plaintiff leave to amend unless it is absolutely clear that amendment could not cure the
10 defects. *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). Here, the court
11 previously warned Mr. Friend that if he failed to correct the noted deficiencies and meet
12 the required pleading standards, the court would dismiss his complaint without leave to
13 amend. (9/3/21 Order at 5.) Mr. Friend has not corrected those deficiencies. (See
14 generally Am. Compl.) Accordingly, the court dismisses his amended complaint without
15 leave to amend and with prejudice.

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IV. CONCLUSION

For the foregoing reasons, the court DISMISSES Mr. Friend's amended complaint (Dkt. # 8) for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B) without leave to amend and with prejudice.

Dated this 21st day of September, 2021.

John P. Blunt

JAMES L. ROBART
United States District Judge